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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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<b>In re:</b>	:	<b>Chapter 11</b>
	:	
<b>RANDALL'S ISLAND FAMILY GOLF</b>	:	<b>Case Nos. 00 B 41065 (SMB)</b>
<b>CENTERS, INC., <u>et al.</u></b>	:	<b>through 00 B 41196 (SMB)</b>
<b>Debtors.</b>	:	
	:	
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**OBJECTION TO  
ASSUMPTION, SALE AND ASSIGNMENT  
OF GROUND LEASE AND OPTION, DATED MAY 15, 1997**

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TO THE HONORABLE STUART M. BERNSTEIN,  
UNITED STATES BANKRUPTCY JUDGE:

**Introductory Statement of Facts**

This Objection is filed by Golf Real Estate, Inc., a creditor, interested party, and the Landlord under the Ground Lease, hereinafter defined, and by Golf Operations, Inc., a creditor and interested third party. Golf Real Estate, Inc. and Golf Operations, Inc. are herein sometimes jointly called “Golf”.

This Court executed an order on September 7, 2000, entered as Document No. 288 on the Case Website, authorizing and approving, among other things, the sale pursuant to Agreement of Sale dated August 1, 2000 (“**Sale Agreement**”) of certain lease rights (“**Lease Rights**”) by Debtors and

Debtors-in-Possession (including debtor, Eagle Quest Golf Centers (Texas), Inc., d/b/a Family Golf Center of Kingwood), herein called the “**Debtors**” to Klak Golf, L.L.C. (herein called “**Sale Order**”). The Sale Order authorized and approved the sale of Lease Rights in and to that certain Ground Lease and Option, (“**Ground Lease**”) dated May 15, 1997, by and between Eagle Quest Golf Centers (Texas), Inc., as “Tenant” and Golf Real Estate, Inc., as “Landlord”, a true and correct copy of which is attached hereto as **Exhibit “A”** for all pertinent purposes (in accordance with First Amendment to General Order No. 182 Re: Electronic Case Filing Procedures, relevant excerpts of the Ground Lease, double underlined, are herewith submitted as **Exhibit “A”**, without prejudice to the right to file additional excerpts or the complete exhibit with the Court at any time). The Ground Lease relates to a golf facility known as Family Golf Center at Kingwood, in Kingwood, Montgomery County, Texas. The Ground Lease is an unexpired lease relating to non-residential properties. Golf Real Estate, Inc. owns the Ground Lease premises.

The Ground Lease was executed as part of and simultaneously with that certain Asset Purchase Agreement (“**Asset Purchase Agreement**”) dated May 15, 1997, by and between Eagle Quest Golf Centers, Inc., as “Buyer”, Eagle Quest Golf Centers (Texas), Inc., as “Subsidiary”, and Golf Real Estate, Inc. and Golf Operations, Inc., as “Sellers”, a true and correct copy of which is attached hereto as **Exhibit “B”** for all pertinent purposes (in accordance with First Amendment to General Order No. 182 Re: Electronic Case Filing Procedures, relevant excerpts of the Ground Lease, double underlined, are herewith submitted as **Exhibit “B”**, without prejudice to the right to file additional excerpts or the complete exhibit with the Court at any time).

The Sale Order provided that Klak Golf, L.L.C., or its designee (“**Klak**”) had the right, at any time prior to and ending on October 9, 2000, to exercise the Lease Rights, and that in such event

Debtors were to promptly seek an order of this Court, providing at least ten days written notice to the respective landlords by overnight mail of a hearing on the proposed assumption and assignment under Sections 365 and 363 of the Bankruptcy Code of any lease as to which Klak exercised such Lease Rights. (Sale Order, p 11-12).

The Court in the Sale Order determined to defer consideration of the sale, assumption and assignment of the Leases until after Klak exercised the Lease Rights (Sale Order, p 4.), and did *not rule* as to any objections “...with respect to issues relating to the sale, assumption and assignment of the Leases” (Sale Order, p 7-8).

On October 9, 2000, Golf’s officers discovered that, without an order of this Court, without notice, without a prior lawful and approved assumption of the Ground Lease by Debtors, without a written assignment of the Ground Lease, without a showing to the Court of adequate assurance of future performance, without hearing, without any apparent lawful authority, and without justification, a third party, Kemper Sports Management, an alleged affiliate of Klak, assumed *de facto* if not actual dominion and control of the premises described in the Ground Lease on or about October 5, 2000, without the consent or even the knowledge of Golf. Debtors have given no written notice as required under the Sale Order, and prior to October 9, 2000, Golf had no actual notice of the exercise by Klak of the Lease Rights. So far as is known to Golf, Kemper Sports Management has no independent right or claim of any kind under the Sale Agreement or otherwise to be upon the premises of the Ground Lease, or to be conducting business operations there, until the Ground Lease has been assumed by Debtors and assigned to Klak, or its designee. Golf considers this an attempted usurpation of the authority of this Court, in that although Debtors have knowingly failed to satisfy the statutory requirements for assumption and assignment of an unexpired nonresidential lease of real

property, and rather than abide by the due process provisions of the Sale Order, engage in a hearing, and await the judgment of this Court to evaluate the evidence related to their request for a Lease Assignment Order pursuant to the Sale Agreement approving assumption and assignment, they have unilaterally placed their intended purchaser in possession, in a classic “cart before the horse” scenario.

Golf continues to await the delivery of the written notice required under the Sale Order, however, it has determined that its interests cannot be served by waiting upon or expecting Debtors to comply therewith, and therefore files this Objection now, shortly after the date of its first actual knowledge that Debtors have authorized the takeover of the Ground Lease premises, and seeks an immediate hearing regarding same.

### **Statement of Objection**

1. This Objection is filed because:

i) Debtors have refused to pay or to provide any assurance that payment will be made out of the proceeds of any sale of the Ground Lease to cure all existing defaults thereunder, as is required under §365(b)(1)(A) and §365(d)(3) of the Bankruptcy Code;

ii) Debtors, because of their failure and refusal to cure such defaults have caused actual pecuniary loss to Golf, the Landlord under the Ground Lease, and have failed and refused to pay such resulting pecuniary loss, as is required under §365(b)(1)(B) of the Bankruptcy Code; and

iii) Debtors and/or Klak Golf, L.L.C. have failed to provide “...adequate assurance of future performance under such contract or lease”, as required under §365(b)(1)(C) and §365(f)(2) of the Bankruptcy Code.

### **Jurisdiction and Venue**

2. Jurisdiction over this civil action is vested in the United States District Court for this District pursuant to Sections 1334 of Title 28 of the United States Code (“Judicial Code”).

3. This civil action has been referred to this Court for consideration pursuant to Section 157 of Title 28 of the Judicial Code and the *Standing Order of Referral of Cases to Bankruptcy Judges* (S.D.N.Y July 10, 1984)(Ward, Acting C.J.)

4. This is a core proceeding arising under Title 11 of the United States Code or arising in a case under Title 11 of the United States Code. *See* 28 U.S.C. §157(b)(1). The statutory predicate for the relief sought herein is Sections 365(b)(1), 365(d)(3), and 365(f)(2).

5. Venue of this civil proceeding in this district is proper pursuant to Section 1409 of the Judicial Code.

### **Section 365(b)(1)(A), Section 365(d)(3), and Section 365(f)(2)(A) Objection**

#### **and Background**

#### **Failure to Cure Lease Defaults**

6. §365(b)(1) of the Bankruptcy Code provides, in pertinent part, that if there has been a default in an unexpired lease of the debtor, the debtor may *not* (emphasis added) assume such lease, unless, at the time of the assumption of such lease, such default is cured, or the debtor provides adequate assurance that such default will be cured. §365(d)(3) of the Bankruptcy Code provides, in pertinent part, that the debtor shall timely perform all of the obligations of debtor, other than those specifically elsewhere enumerated and not pertinent in this context, arising from and after the order for relief under any unexpired lease of nonresidential property, and until the lease is assumed or rejected. In spite of these statutory directives and in spite of numerous written requests and demands

made by Golf Debtors have failed and refused to pay post-petition rent as required under the specific provisions of the Ground Lease.

7. In accordance with Article V of the Ground Lease, any amounts due as “Other Charges” (a defined term) are deemed and treated for all purposes as **additional rent (emphasis added)**. “Other charges” is defined as:

**“...any and all sums, liabilities, obligations, and other amounts, other than Ground Rent, which Tenant is or may be required to pay or discharge (or cause to be paid or discharged) in accordance with the terms of this Lease” .**

Golf sets forth below the items and related amounts which are and constitute “rent” due and payable under the Ground Lease, and as to which Debtors are currently in default (Total = **\$ 173,814.13, so far as is currently determinable**):

- |    |  |               |
|----|--|---------------|
| A. | 2000 Maintenance Fee, Kingwood Place West Community Association Maintenance Fee, Penalty and Interest Through 4-17 (plus penalty and interest through date of payment)   | \$ 1,441.71   |
| B. | Taxes due per Debtor’s “Notice of Proposed Assignment of Lease and Statement of Cure Amounts”, dated August 7, 2000, including 2000 Property Taxes payable to the City of Houston, Texas (Tax, Penalty and Interest through 8-31-2000), in the amount of \$ 7,962.96 | \$17,969.19   |
| C. | 2000 Contingent Payment due under §1(C)(i)(d) of Asset Purchase Agreement, and under § 15.01(e) of the Ground Lease  | \$ 150,000.00 |
| D. | Ground Rent (May 1, 2000 - May 4, 2000)  | \$ 403.23     |
| E. | Amounts due related to failure to install oil/water separator, per agreement dated May 15, 2000  | \$ 4,000.00   |
| F. | Real and Personal Property Taxes now due for the current tax year (Amount unknown as of the filing of this Objection)  | \$ _____      |

8. It is believed that Debtors do intend to pay all of the above amount other than item C, **“2000 Contingent Payment”**, hereinafter defined, although in the event that such belief is not well founded and/or Debtors refuse to pay such amounts Golf asserts Objection with respect to any such refusal to resolve all defaults under the Ground Lease. The Ground Lease contains a cross-default provision (“Cross-Default Provision”) related to contingent payments due and payable under the Asset Purchase Agreement. The cross-default provision, [Section 15.01(e) of the Ground Lease], states that the following constitutes an “Event of Default” under the Ground Lease:

**“(e) if Tenant or Eagle Quest Golf Centers Inc. shall default in the payment of any amount required to be paid by Tenant or Eagle Quest Golf Centers Inc. or in the performance of or compliance with any of the terms and conditions required to be done by Tenant or Eagle Quest Golf Centers Inc. under the Asset Purchase Agreement.”**

9. Under Section 1(C)(i)(d) of the Asset Purchase Agreement, regarding “Contingent Payments” due and payable to Golf Real Estate, Inc and Golf Operations, Inc. in the event of the achievement by Eagle Quest Golf Centers (Texas), Inc., of the revenue “Performance Targets” set forth therein, Eagle Quest Golf Centers (Texas), Inc. failed to timely provide to Golf the “Critical Revenue Statement”, the consequence of which, even if the performance target for Gross Range Revenue were not actually achieved, is automatic achievement of the Performance Target. In spite of this failure to provide the Critical Revenue Statement, Eagle Quest Golf Centers (Texas), Inc. actually achieved the Performance Target for Gross Range Revenue for the period from May 15, 1999 through May 14, 2000. Accordingly, on May 15, 2000, Golf Real Estate, Inc and Golf Operations, Inc. were entitled to the 2000 Contingent Payment called for in the Asset Purchase Agreement in the amount of \$150,000.00, with payment thereof due on or before July 15, 2000 (“2000 Contingent Payment”). The Ground Lease provides for a cure period of thirty days after written notice by the Landlord to the Tenant in the event of the occurrence of an Event of Default of this kind. Written notice called for in the Ground Lease was given by Landlord to Tenant [debtor,

Eagle Quest Golf Centers (Texas), Inc.] on July 18, 2000. Payment of the 2000 Contingent Payment has not been made, no adequate assurance that such payment will be made has been given by Debtors to Golf, and counsel for the Debtors have advised in writing that such payment will not be made, and that such assurance will not be given because it is their opinion that failure to pay the 2000 Contingent Payment is not a default which must be cured under the Bankruptcy Code.

10. The Asset Purchase Agreement and the Ground Lease were part of and form one indivisible transaction which was consummated on May 15, 1997, and were and are not divisible agreements. The Asset Purchase Agreement and the Ground Lease were and are inextricably intertwined, and the interrelationship between such documents was intended and was a specific and essential part of the bargain by and between Golf Real Estate, Inc. and Golf Operations, Inc. on the one hand, and Eagle Quest Golf Centers, Inc., and Eagle Quest Golf Centers (Texas), Inc. on the other. The Asset Purchase Agreement referred to and incorporated the Ground Lease as an Exhibit, and the Ground Lease referred to and incorporated the Asset Purchase Agreement, with the Ground Lease containing the Cross-Default Provision.

11. Pursuant to Section 365(f)(2)(A), the debtor may assign an unexpired lease of nonresidential property only if the debtor first properly assumes the lease. Unless and until the Ground Lease defaults have been paid or adequate assurance has been provided by the Debtors that they will promptly cure such defaults, any assignment of the Ground Lease is statutorily prohibited.

### **Section 365(b)(1)(B) Objection**

#### **Failure to Compensate For Actual Pecuniary Loss**

#### **Attorneys' Fees, Costs and Interest**

12. As a direct result of the refusal and failure of Debtors to cure post-petition defaults under the Ground Lease above described, Golf has suffered actual pecuniary loss in that they have:

i) lost the use and value of the money to which they were entitled and as a result thereof have incurred



actual pecuniary loss which can only be measured by reasonable interest thereon from the date each default occurred until cured; and ii) been obliged to engage the undersigned counsel to represent them and to present prior objections and this objection to the actions now being attempted by Debtors, and to protect their interests in and under the Ground Lease, and have agreed to pay, have paid, or are now obligated to pay to such counsel legal fees and expenses related to such representation, in the total amount, as of the date of the filing of this Objection, of \$ 33,011.31, and will incur further legal fees and expenses in the handling of this Objection, and this amount constitutes further actual pecuniary loss to them.

13. Attached to this Objection as **Exhibit “C”** is the Affidavit of Joseph P. Witherspoon III, attorney for Golf Real Estate, Inc. and Golf Operations, Inc., setting forth in detail the legal services, time spent, and expenses advanced which have been required to defend their interests under the Ground Lease and to demand compliance by Debtors with the Bankruptcy Code and the Ground Lease, and to prepare and file this and two previous Objections, and make at least one Court appearance related to the attempted assumption and assignment of the Ground Lease. The Ground Lease (Article XXIX) provides that the Tenant (Debtors) is liable for indemnification of the Landlord with respect to all “Losses”, defined in § 21.02 (Ground Lease) to mean and include interest, attorneys fees and expenses. Under § 365(b)(1)(B) of the Bankruptcy Code, where there has been a default in an unexpired lease of nonresidential property and debtor seeks to assume such lease, the debtor is required to compensate or provide adequate assurance for compensation of any party other than the debtor to the lease, for any actual pecuniary loss to such party resulting from such default. Because of this Golf respectfully requests that the Court deny any request for a Lease Assignment Order under the Sale Agreement authorizing assumption of the Ground Lease until all conditions of this section of the Bankruptcy Code are satisfied.

14. Golf was entitled to receive the 2000 Contingent Payment in the amount of \$150,000.00 as additional rent due under the Ground Lease on July 15, 2000. Pursuant to specific provisions of the Ground Lease, applicable Texas law, and §365(b)(1)(B) Golf is also entitled to receive and should be awarded interest at the rate of six (6%) percent per year on such \$150,000.00 from and after August 15, 2000, that is at a per diem rate of \$24.66, through the date such interest is paid.

### **Section 365(b)(1)(C) and Section 365(f)(2) Objection**

#### **Failure to Demonstrate Adequate Assurance of Future Performance**

15. Section 365(b)(1)(C) of the Bankruptcy Code provides that where a default has occurred in an unexpired nonresidential lease the debtor may not assume such lease unless it provides adequate assurance of future performance under such lease. This prohibition against assumption is reinforced by Section 365(f)(2) of the Bankruptcy Code which provides that the debtor may assign an unexpired lease *only if*: i) it has properly assumed the lease; and ii) it has provided adequate assurance of future performance by the proposed assignee. The Court in its Sale Order provided that Klak, as purchaser under the Sale Agreement "...shall have the burden of proof with respect to the issue of adequate assurance of future performance under the Leases...". As of the date of the filing of this Objection, *no evidence* of adequate assurance has been presented to the Court or to Golf. In order to meet this burden, should any evidence ever be presented, it must be demonstrated that Klak Golf, L.L.C., or its designee, has engaged in some semblance of financial and economic planning, has some degree of financial and economic stability and ability to make the necessary repairs to the facility which have been occasioned by the lack of care and maintenance while the property has been in the hands of Debtors and in the throes of bankruptcy, has some experience in the operation of a facility of this kind, and has the necessary staff to accomplish such operation, including the ability and affirmatively stated willingness to comply with all of the operative provisions of the Ground Lease,

the making of the reports to Golf which are called for thereunder, and the payment of all rentals called for therein, including, but not limited to Contingent Payments. No effort has been made by Klak to provide adequate assurance of future performance of the Ground Lease.

16. Golf attaches to this Objection a Memorandum of Law, as required under and pursuant to Local Rule 9013-1.

### **Conclusion**

17. Under the Ground Lease, the Asset Purchase Agreement, applicable non-bankruptcy law governing such documents, the Bankruptcy Code, and decisional law interpreting the Bankruptcy Code, it is incumbent upon Debtors, or Klak, as the case may be: i) to cure all existing monetary and non-monetary defaults, or to provide adequate assurance that the Debtors will promptly cure all such defaults; ii) to compensate Golf for all actual pecuniary losses incurred by it as a result of such defaults; and iii) provide adequate assurance of future performance of the Ground Lease by Klak Golf, L.L.C., or its designee, before it may assume or assign the same to Klak Golf, L.L.C., or its designee. As demonstrated above, Debtors have failed to satisfy any of the above requirements.

**WHEREFORE**, Golf Real Estate, Inc. and Golf Operations, Inc. request:

1. that this Objection be docketed and scheduled for hearing before the Court prior to or contemporaneously with this Court's consideration of any request for a Lease Assignment Order under the Sale Agreement approving assumption (or assumption and assignment) of the Ground Lease, or with respect to any motion or request by Debtors for a Lease Assignment Order under the Sale Agreement;
2. that any and all consideration of any request for a Lease Assignment Order under the Sale Agreement authorizing assumption or assignment of the Ground Lease, be stayed and delayed until such time as Debtors have: i) cured all defaults thereunder or provided adequate assurance to them that all defaults thereunder will be cured; ii)

compensated Golf for all actual pecuniary losses incurred by it as a result of such defaults; and iii) provided adequate assurance of future performance of the Ground Lease by Klak Golf, L.L.C., or its designee;

3. alternatively, Golf Real Estate, Inc. and Golf Operations, Inc. seek an order of the Court granting any and all relief sought by Debtors in the any request for a Lease Assignment Order under the Sale Agreement, insofar, and only insofar as related to the Ground Lease, conditioned upon the cure by Debtors of all defaults thereunder or the provision of adequate assurance to them that all defaults thereunder will be cured, payment of compensation to Golf of all of its actual pecuniary losses as a result of such defaults, and the demonstration by the proposed assignee of the Ground Lease of adequate assurance of future performance under the Ground Lease;
4. that the Court order such other and further relief as may be appropriate.

Dated: Houston, Texas.  
October 11, 2000

POLLICOFF, SMITH & REMELS, L.L.P.

By: \_\_\_\_\_

  
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ATTORNEYS FOR GOLF REAL ESTATE,  
INC, AND GOLF OPERATIONS, INC.

**EXHIBIT “A”**

**TO OBJECTION**

**EXCERPTS FROM GROUND LEASE AND OPTION DATED MAY 15, 1997**

GROUND LEASE AND OPTION

BY AND BETWEEN

GOLF REAL ESTATE, INC. (LANDLORD)

AND

EAGLE QUEST GOLF CENTERS (TEXAS) INC. (TENANT)

Dated as of May 15  
\_\_\_\_\_, 1997

Premises Situated in Kingwood, Texas

## ARTICLE II

### TERM

The term of this Lease shall be for the period of thirteen (13) years commencing on \_\_\_\_\_ May \_\_\_\_\_ 15, 1997 (the "Commencement Date") and expiring on \_\_\_\_\_ May \_\_\_\_\_ 15, 2010. Such term is referred to herein as the "Term of this Lease".

## ARTICLE III

### RENT

Section 3.01. Ground Rent. From and after the Commencement Date and throughout the term of this Lease, Tenant shall pay to Landlord ground rent (the "Ground Rent") in the total amount of \$1,500,000.00, monthly in advance, in the following annual amounts:

<u>first through fifth calendar years</u>	<u>\$ 50,000 (\$ 4,167 per month)</u>
<u>sixth through tenth calendar years</u>	<u>\$100,000 (\$ 8,333 per month)</u>
<u>eleventh through thirteenth calendar years</u>	<u>\$250,000 (\$20,833 per month)</u>

Ground rent for any partial month shall be prorated accordingly. If the Commencement Date falls on a day other than the first day of a calendar month, the Ground Rent for such first partial month shall be paid on the Commencement Date.

Section 3.02. Payment of Ground Rent. All installments of Ground Rent shall be paid in lawful funds of the United States of America, at the address of Landlord set forth in Article XXIII or at such other address, to such other party, or by such other means as Landlord may direct to Tenant from time to time by written notice given in accordance with this Lease. Tenant shall, except as specifically provided herein, pay all installments of Ground Rent without any notice or demand whatsoever. The covenant and obligation of Tenant to pay Ground Rent hereunder is absolute, and shall be and remain independent of any other covenant imposed by this Lease upon either Landlord or Tenant; provided, however, that Tenant shall have the right to off-set the payment of Ground Rent against any obligations of Landlord or any obligations of Golf Operations, Inc., or T. Michael O'Connor, arising out of that Asset Purchase Agreement dated May 15, 1997, by and between Golf Real Estate, Inc. and Golf Operations, Inc. as "Sellers", and Eagle Quest Golf Centers Inc. as "Buyer", and Tenant as "Subsidiary" ("Asset Purchase Agreement"), to which reference is here made for all pertinent purposes, as thought set forth herein verbatim, subject to the specific controls and limitations upon the right of off-set contained in Section 6(E) of the Asset Purchase Agreement.

## ARTICLE IV

### USE

The Premises may be used and occupied only for the operation, by Tenant or any permitted subtenant of Tenant, of a lighted or unlighted executive golf course, golf driving range, pro-shop and practice facility and related uses or such other use as approved, in writing and in advance, by Landlord, and in any event such use shall at all times be in accordance with all restrictions and/or covenants affecting or regarding the use of the Premises of record in Montgomery County, Texas and all Legal Requirements (as hereinafter defined). For purposes of this Lease, the term "Legal Requirements" shall mean all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions affecting the Premises or the use or occupancy, thereof, whether now or hereafter enacted and in force.

## ARTICLE V

### NET LEASE

Landlord and Tenant acknowledge and agree that this Lease is intended as a net lease, and that the Ground Rent and all Other Charges (as hereinafter defined) are intended to be paid to Landlord or otherwise as provided herein absolutely net to Landlord, without any notice or demand whatsoever. Without limiting the generality of the foregoing, Tenant shall pay (or cause the payment of) all costs, Impositions (as defined in Section 7.01(b)), insurance premiums, and other expenses of every character, ordinary or extraordinary, foreseen or unforeseen, in connection with this Lease or the possession, use, occupancy, maintenance, repair, construction or reconstruction of the Premises, any Improvements (as defined in Section 6.01) or any portion of either. As used herein, the term "Other Charges" shall be defined as any and all sums, liabilities, obligations, and other amounts, other than Ground Rent, which Tenant is or may be required to pay or discharge (or to cause to be paid or discharged) in accordance with the terms of this Lease, including but not limited to any interest, penalty, or other sum which may be added to any sum payable by Tenant hereunder by reason of Tenant's failure to pay any such sum as and when the same shall first be deemed payable hereunder. For all purposes under this Lease, the amounts due as Other Charges shall be deemed as additional rent and Landlord shall be entitled to any remedy afforded to such amounts being designated as rents. Other Charges payable for partial periods occurring at the commencement or termination of this Lease shall be prorated as between Landlord and Tenant as appropriate.

## ARTICLE VI

### IMPROVEMENTS

Section 6.01. Definitional. For purposes of this Lease, the term "Improvements" shall mean all buildings, structures, improvements, betterments, enhancements, installations and



to or greater in value to that just prior to such Casualty or replace such damaged or destroyed Improvements with other Improvements which Tenant believes would more effectively enhance the overall value or utility of the Premises; or (b) raze the damaged portion of the Improvements and remove all of the debris resulting therefrom from the Land.

### ARTICLE XIII

#### PERMITTED CONTESTS

Notwithstanding any provision of this Lease which specifically requires Tenant to pay any Imposition, to observe, perform, or comply with any Legal Requirement, or to pay, discharge, satisfy or release any Lien (as defined in Article XIV), Tenant may, in accordance with the provisions of this Article XIII, contest the validity, amount, or application to Tenant, to the Premises or any Improvement or to this Lease or Tenant's obligations hereunder, of any Imposition, Legal Requirement or Lien, so long as the Land is not thereby subjected to imminent loss or forfeiture. Any contest conducted pursuant to this Article XIII (all such contests are referred to herein as "Permitted Contests") shall be conducted by appropriate legal (or, if appropriate, administrative) proceedings initiated in good faith and thereafter prosecuted with due diligence, at no cost or expense to Landlord and Landlord shall cooperate with Tenant in connection with any such proceedings.

### ARTICLE XIV

#### LIENS ON PREMISES

Tenant shall not have any right, power or authority whatsoever to create, impose, establish or cause the creation, imposition, or establishment of any lien, encumbrance, charge, levy or other imposition upon the fee simple interest and estate of Landlord in and to the Premises or any portion thereof or any of the rights, title and interests of Landlord in or to the reversionary estate of Landlord in or to any of the same (in any case, a "Lien"). If any Lien arises or is asserted in consequence of any act, omission, or obligation of Tenant, Tenant shall cause such Lien to be canceled and discharged of record by payment, deposit, bond, order of court of competent jurisdiction or otherwise within thirty (30) days after Tenant's receipt of notice of the existence or pendency of the same.

### ARTICLE XV

#### DEFAULTS

Section 15.01. Events of Default by Tenant. The occurrence of any one or more of the following events shall constitute an "Event of Default" by Tenant under this Lease:

- (a) if default shall be made in the payment of any installment of Ground Rent or the payment of any Imposition when and as the same shall become due and payable, and such default shall continue for ten (10) days after Tenant's receipt of Landlord's notice to Tenant of such default;

- (b) except as herein otherwise provided, if Tenant shall default in the due performance of or compliance with any of the terms hereof (other than those referred to in paragraph (a) of this Section 15.01), including, but not limited to, default under paragraph (e) of this Section 15.01, and any such default shall continue for more than thirty (30) days after Tenant's receipt of Landlords notice to Tenant thereof, unless such default is not susceptible to correction using reasonable ameliorative procedures commenced by or on behalf of Tenant within such thirty (30) day period and thereafter prosecuted with due diligence, in which case Tenant shall not be deemed to have committed an Event of Default hereunder provided that Tenant (or any party acting for or on behalf of Tenant) shall continue diligently to prosecute such curative procedures to a timely completion; or
- (c) if Tenant shall make a general assignment for the benefit of creditors, files a petition under any bankruptcy or insolvency laws or there is filed against Tenant a petition under any bankruptcy or insolvency laws (and such petition is not dismissed within sixty (60) days after its filing); or
- (d) if any execution or attachment shall be issued against Tenant (and such execution or attachment is not dismissed within sixty (60) days after its issuance) as a result of which the Premises shall be taken or occupied by someone other than Tenant.
- (e) if Tenant or Eagle Quest Golf Centers Inc. shall default in the payment of any amount required to be paid by Tenant or Eagle Quest Golf Centers Inc. or in the performance of or compliance with any of the terms and conditions required to be done by Tenant or Eagle Quest Golf Centers Inc. under the Asset Purchase Agreement.

## ARTICLE XVI

### LANDLORD'S REMEDIES UPON TENANT'S DEFAULT

- (a) If an Event of Default by Tenant shall have occurred as provided at Section 15.01, above, and for so long as the same shall remain uncured, Landlord shall have the right:
- (i) to pay any sum lawfully and legally required to be paid by Tenant to others which Tenant has failed to pay, and to perform any obligation required to be performed by Tenant, for the account of the Tenant, and any amount so paid by Landlord and all expenses connected therewith, shall be repaid by Tenant to Landlord on demand.
- (ii) to enjoin any breach by the Tenant of any covenant, agreement, term, provision, or condition hereof.

- (iii) to bring suit for the collection of the rent or other amounts for which Tenant may be in default, or for the specific performance of another covenant devolving upon Tenant for performance, and for damages for the non-performance thereof, all without entering into possession or terminating this Lease.
- (iv) to re-enter the Premises or any part thereof, and take possession thereof, without thereby terminating this Lease, and thereupon Landlord may expel and remove all property therefrom, either peaceably or by such force as may be necessary, without becoming liable to prosecution or otherwise obligated therefor, and relet the Premises or any part thereof for such periods and upon such terms according to Landlord's sole discretion, and receive the rent therefrom, applying the same first to the payment of the reasonable expenses of such re-entry and the cost of such reletting, and then to the payment of the rent accruing hereunder and other sums payable by Tenant hereunder, and Tenant, whether or not the Premises are relet, shall remain liable for any deficiency. It is agreed that any entry of the Premises, the commencement and prosecution of any action by Landlord in forcible entry and detainer, ejectment or otherwise, or the appointment of a receiver, or any execution of any decree obtained in any action to recover possession of the Premises, or any re-entry, shall not be construed as an election to terminate this Lease unless Landlord shall, in writing, expressly exercise its election to declare the term hereunder ended and to terminate this Lease, and, unless this Lease be expressly terminated, any such re-entry or entry by Landlord whether had or taken under summary proceedings or otherwise, shall not be deemed to have absolved or discharged Tenant from any of its obligations and liabilities for the remainder of the term of the Lease.
- (v) to terminate this Lease, re-enter upon the Premises, with or without process of law, and take possession thereof unencumbered by this Lease. In the event Landlord shall elect to terminate this Lease as aforesaid, all rights of Tenant, and of any permitted successors and assigns, shall cease and terminate and Landlord shall have and retain full right to sue for and collect all rents and other amount for the payment of which Tenant shall then be in default, and Landlord shall have full right to sue for and collect damages by reason of such breach, and Tenant shall surrender and deliver up the entire Premises to Landlord, together with all improvements and additions thereto, and upon any default by Tenant in so doing Landlord shall have the right to recover possession by summary proceedings or otherwise, and to obtain a receiver and other ancillary relief in such action, and again to have and enjoy the Premises, fully and completely, as if this Lease had never been made. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws

in the event of Tenant being evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of the Premises by reason of the breach or violation by Tenant of any of the covenants and conditions in this Lease contained or otherwise.

- (b) Any amount or amounts paid by Landlord for the account of Tenant for the performance of any obligations required to be performed by Tenant shall be treated as additional rental due hereunder and Landlord may exercise concurrently or successively any one or more of the rights and remedies contained herein for the enforcement of or default in the payment of rent.
- (c) After service of notice or commencement of suit by Landlord for possession of the Premises, or after final judgment for possession of the Premises in favor of Landlord, Landlord, without prejudice, may receive and collect rent and other sums due from Tenant, and the payment of said rent or other sums shall not waive or affect said notice, suit, or judgment.
- (d) All rights and remedies granted herein and any other rights or remedies which Landlord may have at law or in equity are hereby declared to be cumulative and not exclusive, and the fact that Landlord may have exercised any remedy without terminating this Lease shall not impair Landlord's rights thereafter to terminate or to exercise any other remedy herein granted or to which Landlord may otherwise be entitled.

## ARTICLE XVII

### MORTGAGE OF INTERESTS

**EXHIBIT “B”**

**TO OBJECTION**

**EXCERPTS FROM ASSET PURCHASE AGREEMENT DATED MAY 15, 1997**

# ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT** (this "Agreement")  
is made as of the \_\_15\_\_ day of \_\_May\_\_, 1997,

BETWEEN:

EAGLE QUEST GOLF CENTERS INC., a corporation formed under the laws of the  
Province of British Columbia, Canada

("Buyer");

AND: EAGLE QUEST GOLF CENTERS (TEXAS) INC., a Texas corporation

("Subsidiary");

AND:

GOLF REAL ESTATE, INC., a Texas corporation ("GRE");  
GOLF OPERATIONS, INC., a Texas corporation ("GO")(GRE and GO are  
collectively herein sometimes referred to as "Sellers");

WHEREAS, GRE owns certain real property and personal property utilized by GO  
in the operation of the business known as "Total Golf Kingwood", which is located in the Kingwood  
area of Montgomery County, Texas; and

WHEREAS, GO owns all properties of any kind and character not otherwise owned  
by GRE used in the operation of Total Golf Kingwood, and owns Total Golf Kingwood and any and  
all business rights and interests related thereto; and

WHEREAS, Total Golf Kingwood includes an executive golf course, a golf practice  
facility, and related businesses, including, but not limited to driving ranges and the sale of golf  
merchandise (the "Business"); and

WHEREAS, Buyer desires to purchase all personal property, and related rights and  
interests, owned by GO and GRE and utilized by GO in the operation of the Business; and

WHEREAS, Buyer desires that all of the Acquired Assets (as defined herein)  
purchased by Buyer hereunder be delivered and assigned, at the Closing, to "Subsidiary"; and

WHEREAS, Subsidiary desires to enter into a lease\option to purchase agreement  
with GRE relative to the real property utilized by GO in the operation of the Business; and

**ASSET PURCHASE AGREEMENT**

Page \_\_

Eagle Quest Golf Centers Inc. \_\_\_\_\_ (Initialed by Party For Identification)

Eagle Quest Golf Centers (Texas) Inc. \_\_\_\_\_ (Initialed by Party For Identification)

Golf Real Estate, Inc. and Golf Operations, Inc. \_\_\_\_\_ (Initialed by Parties For Identification)

WHEREAS, T. Michael O'Connor, an individual residing in Houston, Texas ("Principal") is the sole shareholder of GO and of GRE respectively; and

WHEREAS, Sellers, Principal, and Buyer entered into a Letter of Intent dated February 12, 1997 ("Letter of Intent"), copy of which is attached hereto as Schedule A to this Agreement, whereby the parties thereto agreed to work toward the preparation of a definitive agreement regarding the sale by GO and GRE to Buyer of the above described personal property and the lease\option to purchase of the above described real property by GRE to Buyer, and

WHEREAS, certain capitalized terms used but not defined elsewhere in the text of this Agreement are defined in Section 10 (B) hereof;

NOW THEREFORE,

IN CONSIDERATION of the mutual covenants, agreements, representations, and warranties contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and the Sellers hereby agree as follows:

**1. PURCHASE AND SALE**

(A) Assets.

(i) Acquired Assets. On the terms and subject to the conditions of this Agreement, the Sellers shall, at the Closing (as hereinafter defined), sell, convey, transfer, assign and deliver (as their interests are set forth in the following schedules) to Buyer, and Buyer shall purchase and acquire from the Sellers, all assets, rights, and interests used or held for use in connection with the Business, other than the Excluded Assets (as defined in Section 1(A)(ii) hereof) (the "Acquired Assets"), including, without limitation, the following:

(a) Fixtures. All buildings, structures, improvements, fixtures, facilities and construction in progress (the "Fixtures") located on the real property described on Schedule B to this Agreement (the "Real Property"), including, without limitation, the Fixtures listed on Schedule C to this Agreement.

(b) Personal Property. All motor vehicles, furniture, computers, printers, software, files, books, records, tools, supplies, equipment, furnishings and all other tangible personal property used or held for use in connection with the Business, including, without limitation, the items described in Schedule C to this Agreement (the "Personal Property").



- (c) Inventory. All range ball inventory and other inventory and supplies (the "Inventory") used or held for use in connection with the Business as of the Closing. A list of all Inventory outstanding on the Closing Date, together with invoice and retail prices, shall be provided by the Sellers to Buyer on the Closing Date (the "Inventory Certificate").
- (d) Contract Rights. The benefit of all contracts, leases, rental agreements, tenancies, licenses, engagements and commitments, written or oral, expressed or implied, relating to or arising out of the conduct of the Business or the Acquired Assets, including, without limitation, the items listed on Schedule D to this Agreement (the "Assumed Contracts").
- (e) Accounts Receivable. All accounts receivable (the "Receivables") relating to the conduct of the Business outstanding as of the Closing.
- (f) Permits. All Existing Permits (as defined herein).
- (g) Records. All documents, records, files and reports, whether written, printed or electronically stored, relating to the Business or the Acquired Assets.
- (h) Certain Claims. All rights and incidents of interest in and to causes of action, suits, proceedings, judgments, claims and demands of any nature, whenever maturing or asserted, relating to or arising directly or indirectly out of the Acquired Assets or the Business, including, without limitation, all interests in and rights to claims under insurance policies and insurance contracts and claims thereunder.
- (i) Intangible Assets. All goodwill associated with the Business, all intellectual property rights (including, without limitation, all patents, copyrights, trademarks, trade names, service marks, logos, slogans, promotions, literary property, trade secrets, know-how and other proprietary rights, whether registered or unregistered) and applications therefor used or held for use in connection with the Business, including, without limitation, the trade names "Total Golf" and "Total Golf Kingwood", or any variations of such names, all telephone listings, telephone numbers and telephone advertising contracts, all lists of customers and prospective customers, files, books and records and other information relating to the day to day

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**ASSET PURCHASE AGREEMENT**

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Eagle Quest Golf Centers Inc. \_\_\_\_\_ (Initialed by Party For Identification)

Eagle Quest Golf Centers (Texas) Inc. \_\_\_\_\_ (Initialed by Party For Identification)

GolfReal Estate, Inc. and GolfOperations, Inc. \_\_\_\_\_ (Initialed by Parties For Identification)

carrying on of the Business, and all other rights used in connection with the Business (collectively, the "Goodwill").

(ii) Excluded Assets. Notwithstanding the foregoing Section 1(A)(i), the assets, rights and interests listed on Schedule E to this Agreement, including, without limitation, all of Sellers' right, title and interest in that certain software known as "Club Pro", the fee simple title to the Real Property (other than the Fixtures), and all right, title and interest of GRE in and to any and all easements not located upon the Real Property but used for purposes of ingress and egress (collectively, "Excluded Assets") will not be included in the Acquired Assets or sold, transferred, assigned, conveyed or delivered by the Sellers to Buyer; provided, however, that the Sellers hereby grant to Buyer and Subsidiary the non-exclusive right to use Club Pro in connection with the operation and maintenance of the Business, without the payment of any royalty or other additional consideration, in its current version and in any improved or modified version, without any obligation on the part of the Sellers to improve, modify, or support Club Pro, for the five (5) year period following the Closing Date; provided, however that neither Buyer nor Subsidiary may use Club Pro for any purpose in connection with the operation and maintenance of other businesses, locations or facilities owned or operated by Buyer or Subsidiary unless a separate license for such use is first obtained from GO.

(B) Liabilities.

(i) Assumed Liabilities. On the terms and subject to the conditions of this Agreement, Buyer will, at the Closing, assume and thereafter in due course pay, perform and discharge the following, and only the following, liabilities and obligations of the Sellers (the "Assumed Liabilities"):

(a) All liabilities and obligations of the Sellers arising under the terms of the Assumed Contracts listed on Schedule D but only to the extent such liabilities and obligations arise, accrue or first become due after the Closing under the terms of the Assumed Contracts; provided, however, that Buyer will not assume or be responsible for any such liabilities or obligations which arise from any breach or default by the Sellers under any Assumed Contract, all of which liabilities and obligations will constitute Retained Liabilities (as hereinafter defined). Notwithstanding anything to the contrary contained in this Agreement or any document delivered in connection herewith, Buyer's obligations in respect of the Assumed Liabilities will not extend beyond the extent to which the Sellers were obligated in respect thereof and will be subject to Buyer's right to contest in good faith the nature and extent of any such liability or obligation.

(b) All liabilities for accrued vacation for employees of the Sellers who are offered employment by Buyer, but only to the extent Buyer receives credit against the Closing Payment and, consequently, the Purchase Price (as defined herein) pursuant to Section 5(H) hereof.

(c) All liabilities for unpaid personal and real property taxes payable on or with respect to the Acquired Assets or the Real Property (collectively, the "Total Assets"), but only to the extent Buyer receives credit against the Closing Payment, and consequently, the Purchase Price pursuant to Section 1(C)(ii) hereof.

(ii) Retained Liabilities. Except as provided in Section 1(B)(i) hereof, the Sellers will retain, and Buyer will not assume or be responsible or liable with respect to, any liabilities or obligations of the Sellers, whether or not arising out of or relating to the conduct of the Business or associated with or arising from any of the Total Assets and whether fixed or contingent or known or unknown, incurred up to and on the Closing Date (collectively, the "Retained Liabilities").

(C) Purchase Price.

(i) Payments. In addition to assuming the Assumed Liabilities, Buyer will pay for the Acquired Assets and the Noncompetition Agreements (as defined herein) the following payments (collectively, the "Purchase Price").

(a) Initial Cash Payments.

(1) \$25,000.00 US (the "Deposit"), which was placed in escrow for the benefit of Sellers pursuant to the escrow instructions attached as Schedule S to this Agreement, which amount is subject to refunding according to the terms of the Letter of Intent; and

(2) \$1,575,000.00 US (the "Closing Payment"), which is subject to adjustment as provided in this Agreement, payable to the Sellers by cash, certified check, wire transfer or other certified funds on the Closing Date;

(b) Share Payments.

- (1) At the Closing, Buyer will deliver to GO certificates representing a total of 100,000 common shares of Buyer (the "Buyer Shares").
- (2) At the Closing, Buyer will execute and deliver to Sellers a Share Purchase Warrant Certificate in the form attached hereto as Schedule P to this Agreement granting to GRE warrants (the "Options") to purchase from Buyer a total of 200,000 Buyer Shares at a per-share price of \$1.00 (One Dollar) US. One-half of the Options will become exercisable on December 15, 1997, and the remainder will become exercisable on December 15, 1998.

(c) Reimbursement Payments.

- (1) At least five days prior to the Closing, Sellers will deliver to Buyer a certificate (the "Capital Lease Certificate") showing a list of, and the payments remaining under any capital leases relating to any of the Total Assets. Buyer shall have the option of assuming such leases as it shall determine to assume, in which case, such leases ("Assumed Leases") shall be included in and governed by the provisions of this Agreement dealing with Assumed Contracts, provided, however, that the personal property covered by Assumed Leases shall not be included in the Acquired Assets; and provided, further, that Buyer receives credit against the Closing Payment and consequently, the Purchase Price, of an amount equal to the net present value (determined using a 6% discount rate) of all remaining lease payments due subsequent to the Closing Date with respect to the Assumed Leases ("Assumed Leases Payout"). The Assumed Leases Payout shall then be added to the actual buy-out cost of the capital leases not assumed by Buyer, and the Buyer shall reimburse Sellers for one-half (1/2) of such total sum, not to exceed \$50,000.00.
- (2) At the Closing, Buyer shall reimburse Sellers for all attorney's fees and expenses paid by Sellers to their attorneys relating to the negotiation, preparation, review and revision of the Letter of Intent, this Agreement and the transaction documents and instruments related to this Agreement and the transactions contemplated hereby and thereby; provided, however that the

total amount of such reimbursement shall not exceed \$10,000.00 US.

(d) Contingent Payments. Within sixty (60) days after the end of each Measurement Period (as described in the following table) during which Buyer achieves any one of the Performance Targets (as described below) for such Measurement Period ("Performance Targets"), Buyer shall deliver to Sellers the amounts set forth in the table below beside the description of such Measurement Period (the "Contingent Payments"):

<u>Measurement Period</u>	<u>Amount</u>	<u>Gross Golf Revenue</u>	<u>Gross Range Revenue</u>	<u>Gross Sales Revenue</u>
<u>Day after the Closing Date through the first anniversary of the Closing Date ("Initial Measurement Period").</u>	<u>\$250,000 US</u>	<u>\$ _____</u>	<u>\$ _____</u>	<u>\$ _____</u>
<u>Day after the first anniversary of the Closing Date through the second anniversary of the Closing Date.</u>	<u>\$250,000 US</u>	<u>See Below</u>	<u>See Below</u>	<u>See Below</u>
<u>Day after the second anniversary of the Closing Date through the third anniversary of the Closing Date.</u>	<u>\$150,000 US</u>	<u>See Below</u>	<u>See Below</u>	<u>See Below</u>
<u>Day after the third anniversary of the Closing Date through the fourth anniversary of the Closing Date.</u>	<u>\$100,000 US</u>	<u>See Below</u>	<u>See Below</u>	<u>See Below</u>
<u>Day after the fourth anniversary of the Closing Date through the fifth anniversary of the Closing Date.</u>	<u>\$50,000 US</u>	<u>See Below</u>	<u>See Below</u>	<u>See Below</u>

For purposes of this Agreement, the Performance Targets with respect to a Measurement Period (except the Initial Measurement Period which Performance Targets shall be those set forth in the above table beside the description of the Initial Measurement Period) shall be achieved if any one of the following three Performance Targets is achieved during such Measurement Period at the Business located on the Real Property included in the Total Assets: not less than 80% of

**ASSET PURCHASE AGREEMENT**

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Eagle Quest Golf Centers Inc. \_\_\_\_\_ (Initialed by Party For Identification)

Eagle Quest Golf Centers (Texas) Inc. \_\_\_\_\_ (Initialed by Party For Identification)

GolfReal Estate, Inc. and GolfOperations, Inc. \_\_\_\_\_ (Initialed by Parties For Identification)

the average of i) the gross revenue from rounds of golf and rental of golf carts (a "round of golf" shall consist of one paid circuit of nine holes upon the golf course, inclusive of junior, senior, promotional, complimentary, tournament, outings, and other similar circuits of nine holes, whether completed or not, and/or whether discounted or not)("Gross Golf Revenue"); ii) the gross driving range revenue from rentals of "buckets of balls" at the "driving range" ("Gross Range Revenue"); or iii) the gross retail sales revenue from sales of merchandise and miscellaneous rentals (not including golfcart rentals) ("Gross Sales Revenue") for the two-year period preceding such Measurement Period (for purposes of the second Measurement Period, the two-year period shall include the Initial Measurement Period and the 12 month period immediately preceding the Initial Measurement Period); provided, however, that in the event that a Performance Target is not achieved for a particular Measurement Period (the "Missed Measurement Period") but the Performance Target would be achieved if the two-year period considered were the Missed Measurement Period and the year subsequent to the Missed Measurement Period, then the Contingent Payment shall be paid upon that two-year average. For a period of five (5) years after the Closing Date, and/or as long as the Contingent Payments are payable Buyer agrees: a) to provide to GO, on or before the thirtieth (30<sup>th</sup>) day after the end of each calendar quarter hereafter, a statement ("Revenue Statement") setting forth in detail the Gross Golf Revenue, Gross Range Revenue, and Gross Sales Revenue (the "Revenue Data") applicable to such calendar quarter, and make available for review evidence thereof generated in the normal course of business, reasonably satisfactory to GO, subject to receipt by Buyer of reasonably acceptable (to Buyer) confidentiality covenants; and b) to furnish to GO, on or before the fifteenth (15<sup>th</sup>) day after the end of the eleventh month of each Measurement Period, a statement summarizing the required Revenue Data relative to the immediately preceding ten months of the Measurement Period, together with evidence thereof reasonably satisfactory to GO generated in the normal course of business ("Critical Revenue Statement")(and permit the copying thereof, subject to receipt by Buyer of reasonably acceptable (to Buyer) confidentiality covenants) and such other information as may be reasonably requested by GO to conduct a complete and thorough audit thereof for the purposes of assuring compliance with the letter and spirit of this component of the consideration to be paid. In the event that Buyer shall fail to timely provide to Seller the Critical Revenue Statement the Performance

Target for the then applicable Measurement Period shall be deemed automatically achieved;

(ii) Prorations and Adjustments.

- (a) At or prior to the Closing, Sellers will fully pay and discharge all current and long-term liabilities relating to the Business or relating to or affecting the Total Assets (including, without limitation, vehicle leases and all obligations outstanding with respect to capital leases relating to the Total Assets that are not listed on the Capital Lease Certificate) and any prepayment penalties or other fees and expenses associated with such payment. In the event that such debt is not fully paid and discharged before the Closing, such debt, together with all associated costs, will be paid out of the Closing Payment, and consequently, the Purchase Price at the Closing, subject to the further terms of Section 1(C)(iii) hereof.
- (b) All personal and real property taxes relative to the current year payable with respect to the Total Assets which are unpaid on the Closing Date shall be prorated between the Sellers and Buyer as of the Closing Date based on the most current available tax rates and assessed values (such prorations to be adjusted when final rates and assessed values are established). All such taxes attributable to the period that ends on the Closing Date, which remain unpaid as of the Closing Date, shall be deducted from the Closing Payment and, consequently, the Purchase Price, and shall be paid by Buyer on the Sellers' behalf to the applicable taxing authorities. An amount equal to the aggregate amount of such taxes, if any, which are attributable to the period that begins after the Closing Date and which have been paid by the Sellers prior to the Closing Date shall be added to the Closing Payment and, consequently, the Purchase Price.
- (c) All adjustments to the Purchase Price will be allocated to the Closing Payment and will be calculated as of 11:59 p.m. on the Closing Date.

- (iii) Escrow of Portion of Purchase Price. At Closing that portion of the Purchase Price which is equal to the actual buy-out cost of the capital leases not assumed by Buyer pursuant to Section 2(D) hereof which has not been paid prior to Closing shall not be paid to Sellers but shall be held in escrow by the Title Company as escrow agent ("Escrow Agent") pursuant to an escrow agreement acceptable to Sellers, Buyer and Title Company ("Escrow Agreement") until GO shall, subject to the further terms hereof, provide to

- (iii) Buyer and Subsidiary shall have delivered, or caused to be delivered, to the Sellers each of the documents required by Section 9(B);
- (iv) Buyer and Subsidiary shall have provided to the Sellers such evidence of their compliance with all laws, regulations, or orders required by the laws of the State of Texas relative to this Agreement and the transactions contemplated hereby (and any payments of the Purchase Price being paid in accordance herewith), as shall have been reasonably requested in writing by the Sellers, including, but not limited to evidence of the filing by Buyer of any reports or returns required to be filed by Buyer with any governmental or regulatory agency with respect to the transactions contemplated hereby;
- (v) Buyer shall have provided to the Sellers evidence of its financial condition sufficient to satisfy the Sellers (and their counsel) as to the credit worthiness of Buyer and as to the ability of Buyer to pay the Purchase Price;
- (vi) Buyer shall have provided to the Sellers such information relative to the Buyer Shares and the Options and Buyer's right and authority to deliver such Buyer Shares and Options as shall have been reasonably requested in writing by the Sellers; and
- (vii) Buyer and Subsidiary shall have delivered, or caused to be delivered to Sellers such evidence of their power and authority to execute and deliver this Agreement and to perform its obligations hereunder, as shall have been reasonably requested in writing by Sellers.

## 8. CLOSING DOCUMENTS

- (A) Delivery of Closing Documents by the Sellers. At the Closing, the Sellers will deliver to Buyer the following documents in form and substance reasonably satisfactory to Buyer, duly executed as required:
  - (i) motor vehicle transfer/tax forms transferring the automobiles included among the Acquired Assets to Buyer, free and clear of all Liens (one for each automobile) and duly endorsed certificates of title for the automobiles evidencing that title to such vehicles is held free and clear of all Liens (one for each automobile);
  - (ii) a bill of sale conveying the Acquired Assets to Buyer;
  - (iii) an assignment to Buyer of the Assumed Contracts;



- (iv) a certificate of the Sellers to the effect that the conditions set forth in Sections 7(B)(iii), (iv), (v), (vi), and (vii) hereof have been satisfied;
- (v) a current certificate of existence and good standing certificate of each of the Companies, issued by the Secretary of State of the State of Texas and the Comptroller of Public Accounts, respectively;
- (vi) a certificate of each Seller to the effect that such Seller is not a foreign person within the meaning of Section 1445(b)(2) of the Code;
- (vii) a TLTA Extended Leasehold Owner's Form B Policy of Title Insurance or its equivalent from the Title Company (the "Title Policy") or a binding undertaking from the Title Company to issue such policy, insuring that leasehold title to the Real Property is vested in Buyer with a policy amount equal to \$1,000,000.00, which Title Policy will contain no exceptions other than the Permitted Exceptions (including any so-called "standard exceptions"), will insure leasehold title to the Real Property in Buyer with such affirmative endorsements as may be reasonably requested by Buyer, (the cost of the premium charged by the Title Company will be at equal cost to the Sellers and Buyer);.
- (viii) an opinion of the Sellers' counsel, dated as of the Closing Date and addressed to Buyer, in the form of Schedule L to this Agreement;
- (ix) Noncompetition Agreements in the forms of Schedule M to this Agreement duly executed by each Seller and Principal (the "Noncompetition Agreements");
- (x) a Ground Lease and Option and recordable Memorandum of Lease in the form of Schedule N to this Agreement duly executed by GRE;
- (xi) the Vacation Certificate, duly executed by the Sellers;
- (xii) the Capital Lease Certificate;
- (xiii) the Inventory Certificate;
- (xiv) a list and aging of the Receivables;
- (xv) the Accounts Payable Report

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**ASSET PURCHASE AGREEMENT**

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Eagle Quest Golf Centers Inc. \_\_\_\_\_ (Initialed by Party For Identification)

Eagle Quest Golf Centers (Texas) Inc. \_\_\_\_\_ (Initialed by Party For Identification)

GolfReal Estate, Inc. and GolfOperations, Inc. \_\_\_\_\_ (Initialed by Parties For Identification)

**EXHIBIT "C"**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X		
	:	
<b>In re:</b>	:	<b>Chapter 11</b>
	:	
<b>RANDALL'S ISLAND FAMILY GOLF</b>	:	<b>Case Nos. 00 B 41065 (SMB)</b>
<b>CENTERS, INC., <u>et al.</u></b>	:	<b>through 00 B 41196 (SMB)</b>
<b>Debtors.</b>	:	
	:	
-----X		

**AFFIDAVIT OF JOSEPH P. WITHERSPOON III  
REGARDING ATTORNEYS' FEES AND COSTS  
IN SUPPORT OF OBJECTION TO  
ASSUMPTION, SALE AND ASSIGNMENT  
OF GROUND LEASE AND OPTION, DATED MAY 15, 1997**

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BEFORE ME, the undersigned authority, on this day personally appeared JOSEPH P. WITHERSPOON III who, being first duly sworn, stated as follows:

"My name is JOSEPH P. WITHERSPOON III. I have personal knowledge of the facts stated in this Affidavit and they are true and correct. I make this Affidavit in support of Golf Real Estate, Inc.'s and Golf Operations, Inc.'s Objection To Assumption, Sale and Assignment of Ground Lease and Option, dated May 15, 1997 (herein called "Objection") in Case Nos. 00 B 41065 (SMB) through 00 B 41196 (SMB), In re Randall's Island Family Golf Centers, Inc., et al, Debtors, Chapter 11, In the United States Bankruptcy Court For the Southern District of New York (herein called "Bankruptcy Proceeding").

I am licensed to practice law in Texas. I am familiar with the attorney's fees customarily awarded by the Courts in Houston, Texas and in Montgomery and Harris Counties, Texas, and in the surrounding counties in Texas.

Golf Real Estate, Inc. and Golf Operations, Inc. retained the undersigned and the firm of Pollicoff, Smith & Remels, L.L.P. to represent them in the Bankruptcy Proceeding relative to the collection of all postpetition rent due to them and the payment of all obligations due under that certain Ground Lease and Option, ("Ground Lease") dated May 15, 1997, by and between Eagle Quest Golf Centers (Texas), Inc., as "Tenant" and Golf Real Estate, Inc., as "Landlord", a true and correct copy of which is attached to the Objection to which this Affidavit is attached to as **Exhibit "A"** for all pertinent purposes, and all related matters. These services commenced on or about April 13, 2000, when it became obvious that the Family Golf entities were contemplating, planning and preparing to seek relief under Chapter 11.

I am authorized by Pollicoff, Smith & Remels, L.L.P. to make this Affidavit of the following facts, I have the care, custody and control of and am familiar with the books and records of such firm. I have attached hereto the statements of Pollicoff, Smith & Remels, L.L.P. submitted to Golf Real Estate, Inc. for each of the months of April, May, June, July, August and September, 2000. These statements set forth in detail the legal services rendered and the dates of the performance of such services. The hourly rate for all such services was and is \$200.00. Such hourly rate is a fair and reasonable rate for the performance of like legal services in Houston, Texas, and Harris and Montgomery Counties, Texas, and is consistent with legal rates charged by other attorneys in such geographic areas. All of the legal services set forth in such

statements were performed by me. In addition, such statements set forth in detail all expenses which have been paid or advanced in connection with the performance of such legal services. Each of the statements attached hereto is a true and correct copy of an original record kept and maintained by me and was made in the regular course of my business and the business of the Pollicoff, Smith & Remels, L.L.P., and in the course of a regularly conducted business activity, and it was the regular practice of business for an employee or representative of my business and the business of the Pollicoff, Smith & Remels, L.L.P. with personal knowledge of such act, event or condition to make and/or retain such memorandum or record or to transmit information thereof to be included in such memorandum or record, and it was made at or near the time of the act, event or condition recorded, or reasonably soon thereafter.

All of the legal services rendered as set forth in the attached statements were necessary and the amount charged therefor was reasonable. The total number of hours actually expended in connection with such legal services through the date of this affidavit is 162.08, and it is anticipated that an additional 25 hours will be expended in connection with the prosecution of the Objection. The total number of hours actually expended and estimated to be expended through the determination of such Objection is 187.08. The total number of such hours multiplied by the applicable hourly rate equals \$ 37,416.00. Taking into consideration the amount in controversy, the Court where the case is pending, the nature and complexity of the case, and the pleadings on file, I am of the opinion that a reasonable attorney's fee in this matter, through determination of the Objection is \$ 37,416.00. At the present time the total

expenses paid or advanced in connection with the performance of such legal services is \$2,186.61, but it is anticipated that an additional \$2,000.00 will be paid or advanced through completion of the representation. The total of such expenses is, therefore, \$4,186.00. All of the expenses which have been paid or advanced, or which will be paid or advanced in connection with the performance of such legal services have been and will be fair, reasonable, and necessary.”

FURTHER AFFIANT SAYETH NOT.

s/ Joseph P. Witherspoon III  
Joseph P. Witherspoon III

SUBSCRIBED AND SWORN TO before me this 11<sup>th</sup> day of October, 2000.

s/ Jennifer L. Murray  
Notary Public, State of Texas

**POLLICOFF, SMITH & REMELS, L.L.P.**  
ATTORNEYS AND COUNSELORS AT LAW

ONE GREENWAY PLAZA - SUITE 300  
HOUSTON, TEXAS 77046-0102  
TELEPHONE 713 622 6866  
TELECOPIER 713 622 5905

April 30, 2000

Golf Real Estate, Inc.  
2501 South Mason Road  
Katy, TX 77450

Invoice # 13589

In Reference To: Kingwood - Attorney, Joseph P. Witherspoon, III

	Professional services	Hours
4/13/2000	Receipt and examination of email and fax from Mr. O'Connor regarding receipt of notice of claim from Shockley Electrical Corp for electrical services rendered to Eagle Quest related to property, and preparation of response to same to Mr. O'Connor; Review of pertinent sections of Ground Lease and Option regarding default and liens; Telephone conference with Mr. O'Connor regarding same; Conference with Mr. O'Connor to review response to Shockley Electric notice, and determination to request payment by Eagle Quest and notification to Shockley regarding correct ownership information (Golf Real Estate, Inc.); Preparation of letter to Eagle Quest (and required other addressees) regarding notice of claim, with cop to Shockley	2.50
4/17/2000	Receipt and examination of email from Mr. O'Connor regarding 2000 contingent payment, and "Critical Revenue Statement", and preparation of email reply to same; Receipt and examination of "Revenue Schedule" submitted by Mr. O'Connor to confirm compliance of "Revenue Schedule" with requirement for "Critical Revenue Statement"; Telephone conference with Mr. O'Connor regarding go-ahead with determination of entitlement to contingent payment for 2000; Receipt and examination of email from Mr. O'Connor regarding negative financial information as to Family Golf/Eagle Quest, and questions in the event of bankruptcy; Review certain provisions of the United States Bankruptcy Code, Ground Lease and Option, and Asset Purchase Agreement; Telephone conference with Mr. O'Connor regarding questions asked in email, and preparation of email reply to questions; Telephone conference with HMS Company, collection agent for Kingwood Place West Community Assn. Regarding Maintenance Fee for 2000; Telephone conference with Mr. O'Connor regarding Maintenance Fee matter and obtaining authority to send Notice of Default; Preparation of Notice of Default (Maintenance Fee); Working on determination of entitlement to 2000 contingent payment; Telephone conference with Mr. O'Connor regarding revenue information for 97-98 and 98-99 (for purposes of computation of contingent payment entitlement	5.00
4/19/2000	Case status and schedule check; Telephone conference with Sean Brown regarding revenue information (re entitlement to 2000 contingent payment per Ground Lease)	0.50
4/24/2000	Telephone conference with Mr. O'Connor regarding removal of improvements (chipping greens) after May 15, 1997, and the negative	1.00

impact of that action upon revenues, request for examination of Ground Lease and any related documents to determine whether this constitutes a default, and if so, regarding preparation of a letter to Eagle Quest detailing same; Review of Ground Lease and Asset Purchase Agreement concerning removal of "Improvements" by Eagle Quest during the term of the lease

4/25/2000	Telephone conference with Mr. O'Connor regarding statements made to personnel at Family Golf Kingwood facility that bankruptcy relief will be requested by Family Golf in the immediate future; Legal research regarding time for assumption or rejection of unexpired nonresidential lease in Chapter 11 reorganizations where lessee is not in default (ie. is current post-petition), possible compulsion to assume or reject lease, and possible request for adequate protection to Golf Real Estate, Inc.; Preparation of email to Mr. O'Connor to send last versions of Asset Purchase Agreement and Ground Lease and Option to him for reference	1.00	
4/27/2000	Case status check, monitoring receipt of green cards relative to April 17, 2000 Notice of Default, and scheduling deadline for cure, that is, April 30, 2000; Conference with Mr. O'Connor regarding recent developments, strategies related to impending bankruptcy of Family Golf, and related matters	1.00	
			<u>Amount</u>
	For professional services rendered	11.00	\$ 2,200.00
4/30/2000	Facsimile transmissions for the month of September	\$10.00	
Total Costs			\$ 10.00
Total amount of this bill			\$2,210.00

**POLLICOFF, SMITH & REMELS, L.L.P.**  
ATTORNEYS AND COUNSELORS AT LAW

ONE GREENWAY PLAZA - SUITE 300  
HOUSTON, TEXAS 77046-0102  
TELEPHONE 713 622 6866  
TELECOPIER 713 622 5905

May 31, 2000

Golf Real Estate, Inc.  
2501 South Mason Road  
Katy, TX 77450

Invoice # 13656

In Reference To: Kingwood - Attorney, Joseph P. Witherspoon, III

	Professional services	Hours
5/1/2000	Receipt and examination of email from Mr. O'Connor regarding status of payment of rent; Telephone conference with Beth McClain regarding lack of receipt of rent for May 2000, and evidence of payment of the maintenance fee; Telephone conference with Mr. O'Connor regarding notice of default letter (rent) and notice of event of default letter (maintenance fee), and letter requesting confirmation that target for 2000 contingent payment has been met; Preparation of letter to Eagle Quest giving Notice of Event of Default (Maintenance Fee); Preparation of letter to Eagle Quest giving confirmation that "Gross Range Revenue" has exceeded the Performance Target for entitlement of Golf Real Estate, Inc. to "Contingent Payment" for 2000 under the Ground Lease and Asset Purchase Agreement; Place telephone call to Joe Amalfitano, Real Estate Manager, Family Golf, regarding "Gross Range Revenue", left message at approximately 5:20 P.M., Central Daylight Time	4.00
5/2/2000	Telephone conference with Beth McCain regarding non-receipt of May rent or evidence that maintenance fee has been paid; Legal research regarding applicable bankruptcy law related to unexpired nonresidential leases and courses of action available to Golf Real Estate Inc. in the event that Eagle Quest/Family Golf files petition for relief under Bankruptcy Code, as expected and anticipated; Place telephone call to Joe Amalfitano, Real Estate Manager of Family Golf regarding requesting response to fax of May 1, 2000 regarding "Gross Range Revenue", left message at 4:34 PM, Central Daylight Time; Preparation of long email message to Mr. O'Connor regarding pre-petition and post-petition strategies related to Family Golf bankruptcy	5.00
5/3/2000	Receipt and examination of correspondence from Joe Amalfitano, Eagle Quest/Family Golf, responding to inquiry relating to performance targets (Ground Lease); Receipt and examination of fax from Mr. O'Connor regarding default notices received by Family Golf from bank on its credit facility and loan agreement, and impending filing of Chapter 11 bankruptcy proceeding; Telephone conference with Mr. O'Connor regarding determination of whether the maintenance fee has been paid and recommendation that if it is has not been paid, the lease should be terminated; Telephone conference with Sue Evans, HMS Company, collector of maintenance fees for Kingwood Place West Community Assn regarding non-receipt of 2000 Maintenance Fee; Telephone	1.50



conference with Mr. O'Connor regarding non-payment of maintenance fee, and obtaining his approval of termination of Ground Lease

5/3/2000	Preparation, editing, and revising of Notice of Termination of Ground Lease; Telephone conference with Mr. O'Connor regarding hold up on sending letter terminating Ground Lease until we have knowledge that performance target has been met and related matters	2.50
5/8/2000	Receipt of email from Mr. O'Connor regarding filing of Chapter 11 Bankruptcy proceeding by Family Golf and related developments; receipt of email from Mr. O'Connor regarding apparent obtaining by debtor in possession of credit facility from Chase Manhattan Bank; Telephone conference with Mr. O'Connor regarding the above and strategy; Telephone conference with Mike Connell and Dan Carrigan, "financial advisors" to Family Golf regarding identity of bankruptcy counsel; Telephone conferences with Lawrence First, then Ayo Landry, at Fried Frank, regarding Court and Case information, and website directions and address; Review and examination of pleadings, affidavits, statements posted on Docket Sheet at case website; Preparation of email to Mr. O'Connor to advise him of website and matters there set forth, as related to 2000 Contingent Payment and related matters	2.50
5/9/2000	Preparation of letter to Eagle Quest/Family Golf (Notice of Filing of Petition Under Bankruptcy Laws); Obtaining Local Rules, Bankruptcy Court, Southern District of New York, Manhattan Division, and reviewing same regarding filing of pleadings and notices; Obtaining and reviewing various pleadings related to Eagle Quest Golf Centers (Texas), Inc.; Preparation of Notice of Appearance and Request For Notices and Papers (in Eagle Quest Golf Centers (Texas), Inc. case; Further review of schedules attempting to determine whether Eagle Quest Golf Centers, Inc. (Canadian corporation) is a named debtor in any proceeding before the bankruptcy court; Place telephone call to Ayo Landry at Fried Frank regarding Canadian corporation Eagle Quest Golf Centers, Inc., left message to determine if that company is in bankruptcy or not; Review of original Asset Purchase Agreement entered into by Eagle Quest Golf Centers, Inc., a corporation formed under the laws of the Province of British Columbia, Canada, and of Guaranty Agreement of Eagle Quest Golf Centers, Inc.	4.00
5/10/2000	Receipt of email from Mr. O'Connor regarding Canadian corporations/assets of Family Golf; Telephone conference with Mr. O'Connor regarding same; Review of orders signed 5/4/200, entered 5/9/2000; Place telephone call to Lawrence First, debtors' counsel regarding Eagle Quest Golf Centers, Inc. (Canadian Corporation), left message	1.00
5/11/2000	Receipt of voice-mail from Gary Kaplan, attorney with Fried Frank, responding to prior telephone call as to Canadian corporations, to advise that none of the Canadian corporations are debtors in this proceeding; Place telephone call to Mr. Kaplan, left message regarding above; Legal research regarding issues related to cross-default provision of Ground Lease (default in the event of non-payment of contingent payments under Asset Purchase Agreements), and remedies and strategies related thereto, and regarding time/deadline for assumption or rejection of unexpired lease in the context of a Chapter 11 proceeding (whether the general requirement for assumption or rejection is applicable); Telephone conference with Mr. O'Connor regarding all of the above matters, and status of achievement of performance target related to 2000	2.83

contingent payment, and related matters; Telephone conference with Gary Kaplan, Fried Frank, regarding further information about Canadian corporations

5/12/2000	Reviewing alternatives and strategies related to obligation of Eagle Quest Golf Centers, Inc. (Canadian) related to contingent payments under Asset Purchase Agreement and Ground Lease; Receipt and examination of email from Mr. O'Connor regarding strategies for dealing with Kingwood property; Telephone conference with Bill Leatherberry, Jones Day regarding status of Eagle Quest Golf Centers, Inc. (Canadian); Place telephone call to Keith Maxfield, attorney for Family Golf, left message regarding status of Eagle Quest Golf Centers, Inc. (Canadian corporation); Preparation of email response to Mr. O'Connor's inquiries regarding strategies (2000 Contingent Payment); Receipt and examination of responsive letter from Fried Frank regarding "Notice of Filing Petition Under Bankruptcy Laws"; Preparation of response to Fried Frank letter; Receipt of voice-mail from Mr. O'Connor making inquiry regarding use of premises under the Ground Lease for purposes other than those authorized thereunder, and regarding the Kingwood facility; Further legal research of Bankruptcy Code, Bankruptcy Rules and related cases regarding assumption and assignment of unexpired leases of nonresidential property and voice-mail message to Mr. O'Connor to advise him regarding findings that use specified in Ground Lease probably cannot be changed because of long-standing rule that assumption and assignment is subject to all terms of lease, and because of requirement of adequate assurance of future performance of lease	4.00
5/15/2000	Telephone conference with Sean Brown regarding evidence of achievement of performance target by Kingwood Family Golf Operation; Receipt and examination of fax from Mr. Brown confirming reaching of target; Receipt of voice-mail from Keith Maxfield, attorney at Family Golf; Telephone conference with Mr. O'Connor regarding information on Keene Realty, agent handling real estate sales for Family Golf, Kingwood facility achievement of performance target, letter to Family Golf regarding same, and related matters; Preparation of letter to Eagle Quest/Family Golf regarding 2000 Contingent Payment; Telephone conference with Mr. O'Connor regarding letter; Place telephone call to Matthew Bodwin, Keene Realty, left message regarding listing agreement with Family Golf related to Kingwood facility	4.00
5/16/2000	Telephone conference with Mr. Brown regarding financing document received from Fried Frank, and other matters relative to Family Golf Bankruptcy; Place telephone call to Keen Realty (Matthew Bordwin), left message regarding listing agreement (Kingwood Golf facility); Telephone conference with Craig Fox, Keen Realty Consultants regarding asking price on Kingwood Facility (assumption of lease, assignment of all assets) (\$1.7 Million); Preparation of email to Mr. O'Connor to advise him of this information.	1.00
5/19/2000	Receipt of voice-mail from Mr. O'Connor regarding characterization of the 2000 Contingent Payment as "secured" or "unsecured" debt by Fried Frank; Place telephone call to Mr. O'Connor, left message to advise him that it is my opinion that the contingent payment is neither secured nor unsecured, but a post-petition administrative expense/debt	0.50

	<u>Amount</u>
For professional services rendered	32.83 \$ 6,566.00

5/31/2000	Postage for the month of May	\$ 9.82	
	Facsimile transmissions for the month of September	\$ 5.00	
Total Costs			\$ 14.82
Total amount of this bill			\$6,580.82

**POLLICOFF, SMITH & REMELS, L.L.P.**  
ATTORNEYS AND COUNSELORS AT LAW

ONE GREENWAY PLAZA - SUITE 300  
HOUSTON, TEXAS 77046-0102  
TELEPHONE 713 622 6866  
TELECOPIER 713 622 5905

June 30, 2000

Golf Real Estate, Inc.  
2501 South Mason Road  
Katy, TX 77450

Invoice # 13705

In Reference To: Kingwood - Attorney, Joseph P. Witherspoon, III

	Professional services	Hours
6/5/2000	Receipt and examination of numerous pleadings, notices, and documents related to Bankruptcy of Family Golf; General status check of case; Receipt and examination of City of Houston 1999 Property Tax Statement regarding 5.5680 Ac Tract (part of premises covered under Ground Lease and Option); Telephone conference with Mr. O'Connor regarding status, unpaid City of Houston taxes, and related matters.	1.00
6/7/2000	Preparation of Notice of Default letter to Eagle Quest regarding failure to pay 1999 Property Taxes due to City of Houston; In-depth review of recently filed motions and pleadings in Family Golf Bankruptcy matters.	1.50
6/8/2000	Continued review of pleadings on court website regarding extension of time for assumption or rejection of unexpired leases of non residential property, and review of Order granting additional time for filing of schedule of unexpired leases, etc, entered May 4, 2000; Telephone conference with Mr. O'Connor regarding same.	1.00
6/12/2000	Telephone conference with Mr. O'Connor regarding status; Receipt of voice-mail from Pam Charles, Family Golf, regarding necessity for refax of June 7, 2000 letter regarding taxes due and payable to City of Houston; Preparation of new fax to Eagle Quest.	0.50
6/19/2000	Receipt and examination of numerous pleadings filed by debtor in bankruptcy case, including Motion to Extend Time Within Which Debtors-In-Possession Must Elect to Assume or Reject Their Unexpired Leases of Non residential Real Property, filed June 16, 2000; Preparation of email to Mr. O'Connor to advise him of extension motion and effect; Telephone conference with Mr. O'Connor regarding extension motion and strategy concerning same.	1.50
6/27/2000	Receipt and examination of recently filed pleadings, specifically related to the global bidding procedures program.	0.50
6/28/2000	Legal research regarding issue of potential (probably) default under Ground Lease in payment of performance payment due on July 15, 2000, as related to right of Family Golf, as debtor, to assume/assign the Ground Lease under the attempt by Family Golf to sell or otherwise dispose of certain properties, including those at the	4.00

Kingwood facility; Telephone conference with client regarding question of compliance by Eagle Quest with the insurance provisions of the Ground Lease; Telephone conference with Sean Brown to inquire as to the receipt by Golf Real Estate, Inc. of current certificates of insurance required under Section 8.3 of the Ground Lease, or any other evidence of compliance with Article VIII thereof; Continued review of pleadings/motions filed by Family Golf regarding auction procedures, the "Break-Up Fee Program"; Telephone conference with Mr. O'Connor regarding notice to Eagle Quest - default In providing certificates of insurance, and if not given, regarding lack of certificate related to performance targets; Preparation of Notice of Default - Insurance letter to Eagle Quest; Preparation of Notice of Contingent Payment of \$150,000.00 Due July 15, 2000 letter to Eagle Quest; Place telephone call to Mr. O'Connor, left message regarding determining from real estate handler for Family Golf, what is being offered with respect to Ground Lease and assets of Debtor located thereon.

			<u>Amount</u>
	For professional services rendered	10.00	\$2,000.00
6/30/2000	Postage for the month of June	\$44.70	
	Facsimile transmissions for the month of June	\$50.00	
	Long distance for month of May	\$ 5.46	
	Total Costs		\$ 100.16
	Total amount of this bill		\$2,100.16

**POLLICOFF, SMITH & REMELS, L.L.P.**  
ATTORNEYS AND COUNSELORS AT LAW

ONE GREENWAY PLAZA - SUITE 300  
HOUSTON, TEXAS 77046-0102  
TELEPHONE 713 622 6866  
TELECOPIER 713 622 5905

July 31, 2000

Golf Real Estate, Inc.  
2501 South Mason Road  
Katy, TX 77450

Invoice # 13775

In Reference To: Kingwood - Attorney, Joseph P. Witherspoon, III

	Professional services	Hours
7/17/2000	Place telephone call to Mr. O'Connor, left message regarding receipt or not of \$150K due July 15, 2000; Reviewing recent pleadings affecting Family Golf bankruptcy, status of hearing/order regarding extension of time within which debtor may accept or reject non-residential leases, and strategizing regarding apparent failure to make substantial post-petition payment called for under Ground Lease.	2.00
7/18/2000	Receipt and examination of voicemail from Mr. O'Connor regarding proceeding with respect to non-payment of 2000 Contingent Payment; Preparation of Notice of Post-Petition Default with respect to contingent payment; Review of documents obtained by Mr. O'Connor from Keen Realty Consultants, Inc. related to offer to purchase leasehold and related interests of Family Golf; Conference with Mr. O'Connor regarding alternatives available concerning contingent payment; Receipt and examination of letter from debtor's counsel, regarding debtor's position that the contingent payment is pre-petition debt and subject to the automatic stay; Place telephone call to Mr. O'Connor, left message regarding response from debtor, and fact that Court has granted the Motion to Extend Time for Assumption or Rejection of Non-Residential Leases (for 90 days); Legal research regarding Bankruptcy Code requirement (Sec 365(d)(3) that all obligations of lease must be performed post-petition and prior to assumption or rejection with respect to consideration of filing Motion to Compel Payment By Debtor of post-petition lease obligations; Preparation of email to Mr. O'Connor regarding same.	3.00
7/19/2000	Receipt of voice-mail from Mr. O'Connor, responding to email regarding Family Golf refusal to pay contingent payment; Telephone conference with Mr. O'Connor to discuss alternatives in handling of contingent payment regarding same.	1.00
7/20/2000	Telephone conference with Mr. O'Connor regarding developments as to proposal to conduct auction of fee simple and leased properties (Motion filed 7-19-2000)	0.25
7/24/2000	Receipt and examination of fax from Family Golf related to Certificate of Insurance; Receipt and examination of pleadings filed by debtor related to Omnibus Sale; Place telephone call to Mr. O'Connor, left message regarding proposed sale/abandonment of leasehold interests; Commencement of Motion for Admission Pro Hac Vice, and Objection to Motion (Omnibus Sale Hearing), and related matters.	3.00

7/25/2000	Preparation of letter to Bender and Kaplan, attorneys for Family Golf in bankruptcy, to request statement of position regarding cure of default or adequate assurance of cure of default at or prior to assumption of Ground Lease; Continued preparation of Objection (to sale of Ground Lease), legal research.	4.50	
7/26/2000	Telephone conference with Steve Kaplan, Rosenfeld & Kaplan, New York attorneys regarding serving as agents for service of papers in bankruptcy matter, pursuant to admission pro hac vice local rule; Telephone conference with Mr. O'Connor regarding status; Continued work on Objection, Motion for Admission Pro Hac Vice, and related matters; Telephone conference with Gary Kaplan, Debtors' counsel, Telephone conference with Gerald Bender, lead Debtors' counsel regarding letter dated July 25, 2000, request for assurance of cure of defaults, and possible settlement.	8.00	
	Monitoring service of Objection upon United States Bankruptcy Clerk in New York and other required parties; Conference with Mr. O'Connor to review status and discuss strategy and alternatives; Preparation for hearing.	6.00	
7/27/2000	Continued work on pleadings (Objection, Memorandum of Law, Motion for Admission, Affidavit of Service), transmittal letters and related correspondence, email and faxes; Preparation for hearing.	6.00	
7/30/2000	Travel to New York; Preparation for Omnibus Sale Hearing.	10.00	
7/31/2000	Appearance and participation in Omnibus Sale Hearing, NYC.	10.00	
			<u>Amount</u>
	For professional services rendered	53.75	\$10,750.00
7/27/2000	Fee to Clerk of US Bankruptcy Court for the Southern District of New York for Admission to practice Pro Hac Vice.	\$25.00	
7/31/2000	Postage for the month of July	\$21.62	
	Copies for the month of July	\$155.80	
	Facsimile transmission for the month of July.	\$15.00	
Total Costs			\$ 217.42
Total amount of this bill			\$10,967.42

**POLLICOFF, SMITH & REMELS, L.L.P.**  
ATTORNEYS AND COUNSELORS AT LAW

ONE GREENWAY PLAZA - SUITE 300  
HOUSTON, TEXAS 77046-0102  
TELEPHONE 713 622 6866  
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August 31, 2000

Golf Real Estate, Inc.  
2501 South Mason Road  
Katy, TX 77450

Invoice # 13799

In Reference To: Kingwood - Attorney, Joseph P. Witherspoon, III

	Professional services	Hours
8/1/2000	Travel related to Family Golf matter.	5.00
8/2/2000	Conference with Mr. O'Connor regarding status; Telephone conferences with Bankruptcy Clerk regarding non-entry of pleadings on website filed on July 28, 2000, and effecting such entry; Review of website pleading postings and status of contract for sale of 36 properties.	2.00
8/4/2000	Review of case website regarding status, monitoring proposed contract for sale of 36 properties.	1.00
8/7/2000	Receipt and examination of Agreement of Sale (Family Golf to Klak Golf) dated August 1, 2000; Receipt of voice-mail from Steve Greenbaum (Klak) regarding Agreement; Receipt of second voice-mail from Steve Greenbaum; Preparation of initial memorandum regarding agreement and related considerations and factors.	4.00
8/8/2000	Receipt and examination of correspondence and enclosures (Notice of Proposed Assignment of Lease and Statement of Cure Amounts) from Gerald Bender, a attorney for Golf, debtor; Telephone conferences with Sean Brown regarding evidence from Family Golf as to achievement of performance targets; Telephone conference with Bender regarding letter and deferral of hearing on assumption of lease until Klak makes its decision as to rejection or assumption of same; Telephone conference and office conference with Mr. O'Connor concerning strategy as to lease, Klak, debtor, and related matters.	8.00
8/9/2000	Preparation of letter to Bender in response to his Notice of Proposed Assignment of Lease and Statement of Cure Amounts; Preparation of Amended Objection (to Debtors' Motion for Orders Authorizing Assignment of Leases) with Request For Hearing, and causing same to be served upon clerk, Court, and ordered parties and counsel; Short conference with Mr. O'Connor; Emailing copies of documents, pleadings to Mr. O'Connor.	8.50
8/10/2000	Telephone conference with Sean Brown concerning information obtained by him during telephone conversations with Joe Amalfitano at Family Golf, to the effect that there are additional personal property taxes due and owing (to New Caney, ISD) and probable additional personal property taxes due to Harris County (a mistake apparently) was made in assessing same, and this fact is known by Harris County taxing	1.50



authorities, and also regarding computations of the 2000 performance target; Place telephone call to Gerald Bender, bankruptcy counsel for Family Golf, left message

regarding joint motion as to hearing on Objection to Motion for Orders (Assumption, Assignment of Ground Lease)

8/11/2000	Telephone conferences with Clerk, Courtroom deputy, and law clerk of Judge Bernstein to the effect that attendance is not necessary if this can be agreed upon by and between parties; Telephone conference with Gerald Bender, attorney for Debtors regarding agreement about non appearance at continuation of Omnibus Sale Hearing; Preparation of proposed letter confirming agreement; Telephone conference with James Savin, attorney for Debtors regarding revision; Revising letter agreement and sending same to Savin; Telephone conference with Savin regarding revisions.	4.00
8/15/2000	Telephone conference with Mr. O'Connor regarding inquiry at to 8/14 continuation of hearing; Telephone conference with Gay Gottlieb, attorney for McGuirt, Wing and Christie regarding hearing and occurrences; Preparation of memorandum to file regarding information obtained from Gottlieb; Place telephone call to Mr. O'Connor, left message to advise of receipt of information.	1.00
8/18/2000	Reviewing case website and "Notice of Settlement of Order", related to Debtors' Motion to Sell Properties and Assume Leases"; Preparation of email to Mr. O'Connor to advise him of proposed order and related matters; Telephone conference with Mr. O'Connor regarding proposed order and status.	1.00
8/21/2000	Checking case website regarding pleadings.	0.50
8/29/2000	Review case website and receipt of first motion to reject a lease in case; Preparation of email to Mr. O'Connor to advise him of such; Legal research regarding effect of rejection of lease; limitation of amount of unsecured claim for damages, administrative claims, priority of claims; Preparation of memorandum to Mr. O'Connor, regarding the above.	3.50
8/30/2000	Review case website regarding developments affecting interests of Golf Real Estate, Inc.; Continued research regarding Golf's claims; Telephone conference with Mr. O'Connor regarding status, strategies, and related matters.	3.00
8/31/2000	Review of Ground Lease for specific provisions authorizing attorneys' fees and interest in the event of default (located at Article XXIX and Section 21.02) - for inclusion as "rent" pursuant to administrative claim in the event of rejection of lease; Legal research regarding entitlement of landlord to priority administrative claim status for post-petition rent related to unexpired non-residential lease.	3.00

		<u>Amount</u>
For professional services rendered	45.50	\$9,100.00

8/1/2000	Expenses incurred by Joe Witherspoon in travel to and attendance at hearing in New York. Air Travel - \$1,191.00 Hotels           306.19 Ground Travel   80.00 Cell phone Roaming      100.00 Food/Incidentals 29.48	\$1,706.67
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8/28/2000	Long distance for the month of July	\$ 6.46	
8/31/2000	Postage for the month of August	\$25.58	
	Copies for the month of August	\$62.20	
	Facsimile transmission for the month of August	\$20.00	
Total Costs			\$1,820.91
Total amount of this bill			\$10,920.91

**POLLICOFF, SMITH & REMELS, L.L.P.**  
ATTORNEYS AND COUNSELORS AT LAW

ONE GREENWAY PLAZA - SUITE 300  
HOUSTON, TEXAS 77046-0102  
TELEPHONE 713 622 6866  
TELECOPIER 713 622 5905

September 30, 2000

Golf Real Estate, Inc.  
2501 South Mason Road  
Katy, TX 77450

Invoice # 13814

In Reference To: Kingwood - Attorney, Joseph P. Witherspoon, III

	Professional services	Hours	
9/8/2000	Receipt and examination of correspondence from KLAKE(Kemper Sports Management) regarding Ground Lease; Telephone conference with Mr. O'Connor regarding strategies and approaches.	1.00	
9/11/2000	Receipt of email from Mr. O'Connor regarding scenarios related to actions to be taken by Klak and Debtors relative to Ground Lease, and response to letter from Klak; Preparation of email to Mr. O'Connor	0.50	
9/12/2000	Telephone conference with Mr. O'Connor regarding response to Klak letter; Preparation of draft of letter to Robert Wallace, Kemper Sports Management, send draft to Mr. O'Connor for review and approval	2.50	
9/15/2000	Receipt and examination of email from Mr. O'Connor approving of response to Klak letter(Robert Wallace at Kemper Sports Management); Revising and completing letter to Mr. Wallace	1.50	
9/25/2000	Receipt and examination of pleadings regarding Motion to Extend Deadline for assumption or rejection of unexpired leases; Review case website, obtaining copy of Order Approving Sale of Leasehold Rights (Ground Lease) dated September 7, 2000; Preparation of email to Mr. O'Connor regarding method for handling default cure on Ground Lease, per 9/7/00 Order and regarding Motion To Extend	1.50	
9/27/2000	Telephone conference with Robert Wallace, Kemper Sports Management regarding intentions of Klak to go forward with request for assumption of Ground Lease; Faxing copies of 9-15-00 correspondence and excerpts from Asset Purchase Agreement to Wallace (regarding Contingent Payments)	1.50	
9/29/2000	Review website, advise Mr. O'Connor of status	0.50	
			<u>Amount</u>
	For professional services rendered	9.00	\$ 1,800.00
9/20/2000	Long Distance telephone calls for the month of August	\$13.30	
9/30/2000	Facsimile transmissions for the month of September	\$10.00	

Total Costs	\$ 23.30
Total amount of this bill	\$1,823.30

